

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PHILLIP MAROTTA,

Plaintiff,

v.

MI-JACK PRODUCTS, INC.,
FANTUZZI REGGIANE, FANTUZZI
USA, INC. and MASSACHUSETTS
PORT AUTHORITY,

Defendants.

CIVIL ACTION NO. 05-10823-RWZ

**MASSACHUSETTS PORT AUTHORITY'S ANSWER
TO PLAINTIFF'S COMPLAINT**

Defendant Massachusetts Port Authority ("Massport") hereby answers the Plaintiff's Complaint (the "Complaint") as follows:

First Defense

Each count of the Complaint fails to state a claim upon which relief can be granted.

Second Defense

Massport responds to the allegations contained in the Complaint, paragraph by paragraph, as follows:

Jurisdiction

Massport states that it is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in this Paragraph. Further answering, Massport states that the allegations contained in this Paragraph call for a legal conclusion to which no response is required. To the extent a response is required, Massport denies the allegations contained in this Paragraph.

Count I
(Negligence/Failure to Warn v. Mi-Jack Products, Inc.)

1. The allegations in Paragraph 1 of the Complaint concern, exclusively, Defendant Mi-Jack Products, Inc. ("Mi-Jack") and thus, do not require an answer. To the extent that any allegations in Paragraph 1 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

2. The allegations in Paragraph 2 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 2 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

3. The allegations in Paragraph 3 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 3 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

4. The allegations in Paragraph 4 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 4 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

5. The allegations in Paragraph 5 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 5 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

6. The allegations in Paragraph 6 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 6 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

7. The allegations in Paragraph 7 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 7 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

8. The allegations in Paragraph 8 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 8 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

9. The allegations in Paragraph 9 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 9 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

10. The allegations in Paragraph 10 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 10 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

11. The allegations in Paragraph 11 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 11 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

Count II
(Breach of Warranty v. Mi-Jack Products, Inc.)

12. The responses to Paragraphs 1 through 11 are restated and incorporated herein by reference.

13. The allegations in Paragraph 13 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 13 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

14. The allegations in Paragraph 14 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 14 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

15. The allegations in Paragraph 15 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 15 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

16. The allegations in Paragraph 16 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 16 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

17. The allegations in Paragraph 17 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 17 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

18. The allegations in Paragraph 18 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 18 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

19. The allegations in Paragraph 19 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 19 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

20. The allegations in Paragraph 20 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 20 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

21. The allegations in Paragraph 21 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 21 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

22. The allegations in Paragraph 22 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 22 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

23. The allegations in Paragraph 23 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 23 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

24. The allegations in Paragraph 24 of the Complaint concern, exclusively, Mi-Jack and thus, do not require an answer. To the extent that any allegations in Paragraph 24 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

Count III
(Negligence/Failure to Warn v. Fantuzzi Reggiane)

25. The responses to Paragraphs 1 through 24 are restated and incorporated herein by reference.

26. The allegations in Paragraph 26 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 26 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

27. The allegations in Paragraph 27 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 27 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

28. The allegations in Paragraph 28 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in

Paragraph 28 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

29. The allegations in Paragraph 29 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 29 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

30. The allegations in Paragraph 30 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 30 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

31. The allegations in Paragraph 31 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 31 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

32. The allegations in Paragraph 32 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 32 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

33. The allegations in Paragraph 33 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 33 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

34. The allegations in Paragraph 34 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 34 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

35. The allegations in Paragraph 35 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 35 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

36. The allegations in Paragraph 36 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 36 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

Count IV
(Breach of Warranty v. Fantuzzi Reggiane)

37. The responses to Paragraphs 1 through 36 are restated and incorporated herein by reference.

38. The allegations in Paragraph 38 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 38 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

39. The allegations in Paragraph 39 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 39 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

40. The allegations in Paragraph 40 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 40 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

41. The allegations in Paragraph 41 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 41 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

42. The allegations in Paragraph 42 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 42 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

43. The allegations in Paragraph 43 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 43 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

44. The allegations in Paragraph 44 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 44 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

45. The allegations in Paragraph 45 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in

Paragraph 45 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

46. The allegations in Paragraph 46 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 46 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

47. The allegations in Paragraph 47 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 47 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

48. The allegations in Paragraph 48 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 48 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

49. The allegations in Paragraph 49 of the Complaint concern, exclusively, Defendant Fantuzzi Reggiane and thus, do not require an answer. To the extent that any allegations in Paragraph 49 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

Count V
(Negligence/Failure to Warn v. Fantuzzi USA, Inc.)

50. The responses to Paragraphs 1 through 49 are restated and incorporated herein by reference.

51. The allegations in Paragraph 51 of the Complaint concern, exclusively, Defendant Fantuzzi USA, Inc. ("Fantuzzi USA") and thus, do not require an answer. To the extent that any

allegations in Paragraph 51 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

52. The allegations in Paragraph 52 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 52 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

53. The allegations in Paragraph 53 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 53 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

54. The allegations in Paragraph 54 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 54 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

55. The allegations in Paragraph 55 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 55 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

56. The allegations in Paragraph 56 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 56 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

57. The allegations in Paragraph 57 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 57 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

58. The allegations in Paragraph 58 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 58 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

59. The allegations in Paragraph 59 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 59 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

60. The allegations in Paragraph 60 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 60 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

61. The allegations in Paragraph 61 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 61 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

Count VI
(Breach of Warranty v. Fantuzzi USA, Inc.)

62. The responses to Paragraphs 1 through 61 are restated and incorporated herein by reference.

63. The allegations in Paragraph 63 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 63 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

64. The allegations in Paragraph 64 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 64 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

65. The allegations in Paragraph 65 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 65 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

66. The allegations in Paragraph 66 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 66 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

67. The allegations in Paragraph 67 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 67 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

68. The allegations in Paragraph 68 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in

Paragraph 68 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

69. The allegations in Paragraph 69 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 69 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

70. The allegations in Paragraph 70 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 70 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

71. The allegations in Paragraph 71 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 71 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

72. The allegations in Paragraph 72 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 72 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

73. The allegations in Paragraph 73 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 73 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

74. The allegations in Paragraph 74 of the Complaint concern, exclusively, Defendant Fantuzzi USA and thus, do not require an answer. To the extent that any allegations in Paragraph 74 may be construed as allegations of negligence or wrongdoing by Massport, they are denied.

Count VII
(Negligence v. Massport)

75. The responses to Paragraphs 1 through 74 are restated and incorporated herein by reference.

76. Massport lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 76 and on that basis denies the allegations contained in Paragraph 76.

77. Massport admits that it is a body corporate and politic that was established by Chapter 465 of the Acts of 1956 to exercise the powers duly authorized by statute and that Massport's principal office is located at 1 Harborside Drive, East Boston, Massachusetts 02128. Unless otherwise specifically admitted herein, Massport denies the allegations contained in Paragraph 77.

78. Massport lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 78 and on that basis denies the allegations contained in Paragraph 78.

79. Denied.

80. Denied.

81. Denied.

Third Defense

If the Plaintiff suffered injuries, as alleged, such injuries were caused by someone for whose conduct Massport was not and is not legally responsible.

Fourth Defense

The Plaintiff's injuries were caused in whole or in part by the Plaintiff's negligence. Accordingly, the damages, if any, Plaintiff recovers from Massport should be reduced in proportion to the Plaintiff's negligence in accordance with G.L. c. 231, § 85.

Fifth Defense

The action is barred by the applicable statutes of limitations and repose.

Sixth Defense

The alleged defect Plaintiff complains of was an open and obvious condition for which there was no duty to warn.

Seventh Defense

The Plaintiff's claim is barred because the Plaintiff failed to give due notice of the claim and Massport was prejudiced thereby.

Eighth Defense

Even if Massport is found to have any liability for the incident alleged by the Plaintiff, which it denies, its liability would be limited to a maximum of \$5,000.00 pursuant to G.L. c. 84, § 15.

Ninth Defense

The Plaintiff's claims are barred by the employer immunity provision of the Massachusetts Worker's Compensation Act and the Longshore and Harbor Workers' Compensation Act.

Tenth Defense

Massport had no prior knowledge of the defect of which the Plaintiff now complains.

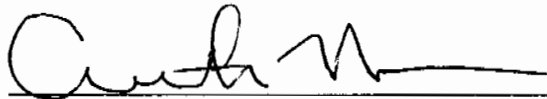
Eleventh Defense

Massport reserves the right to add such other and further defenses as become apparent in the course of discovery.

THE DEFENDANT DEMANDS A TRIAL BY JURY AS TO ALL ISSUES

MASSACHUSETTS PORT AUTHORITY,

By its attorneys,

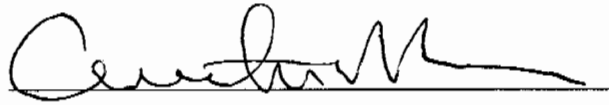
A handwritten signature in black ink, appearing to read 'Chris M.', is written over a horizontal line.

Christopher A. Kenney, BBO #556511
Anthony L. DeProspo, Jr., BBO #644668
Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110
(617) 646-2000

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney(s) of record for each party by ~~hand~~/mail.

Date: 7/18/05

A handwritten signature in black ink, appearing to be "C. Anderson", written over a horizontal line.